STATE OF MICHIGAN

COURT OF APPEALS

VIOLA WILLIAMS,

Plaintiff-Appellant,

v

THE KROGER COMPANY OF MICHIGAN,

Defendant-Appellee.

UNPUBLISHED
July 13, 2001

No. 224776
Washtenaw Circuit Court
LC No. 99-005177-NO

Before: Saad, P.J., and Holbrook, Jr., and Murphy, JJ.

MEMORANDUM.

Plaintiff appeals as of right the order granting defendant summary disposition under MCR 2.116(C)(10). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

While shopping at one of defendant's stores in Ann Arbor, plaintiff slipped on some pea pods that were lying on the floor of the produce department. She brought this negligence action, and defendant moved for summary disposition, asserting that the hazard was open and obvious. The trial court granted summary disposition, finding that no reasonable person could differ as to whether a person would discover the green peas on the white store floor upon casual inspection. The court concluded that plaintiff failed to provide sufficient facts to show a duty.

This Court will review the trial court's grant of summary disposition de novo. *Milliken v Walton Manor Mobile Home Park, Inc*, 234 Mich App 490, 492; 595 NW2d 152 (1999). A motion for summary disposition under MCR 2.116(C)(10) tests whether there is factual support for a claim. *Spiek v Dep't of Transportation*, 456 Mich 331, 338; 572 NW2d 201 (1998). The party opposing the motion is required to present evidentiary proofs creating a genuine issues of material fact for trial. *Smith v Globe Life Ins Co*, 460 Mich 446, 455 n 2; 597 NW2d 28 (1999). All inferences will be drawn in favor of the nonmoving party. *Dagen v Hastings Mut Ins Co*, 166 Mich App 225, 229; 420 NW2d 111 (1987).

A possessor of land does not owe a duty to protect his invitees from dangers that are so obvious and apparent that an invitee may be expected to discover them himself. *Riddle v McLouth Steel Products Corp*, 440 Mich 85, 94; 485 NW2d 676 (1992). The open and obvious danger rule is a defensive doctrine that attacks the duty element that a plaintiff must establish in a prima facie negligence case. *Millikin, supra*, 495. The open and obvious doctrine applies both to

claims that a defendant failed to warn about a dangerous condition and to claims that the defendant breached a duty in allowing the dangerous condition to exist in the first place. *Id.*

Plaintiff did not establish anything unusual about the peas on the floor that would pose an unreasonable risk of harm notwithstanding their open and obvious nature. *Id.*, 499. Plaintiff did not set forth any evidence that would show that an average user with ordinary intelligence would not have been able to discover green peas on a white floor upon casual inspection. *Novotney v Burger King Corp*, 198 Mich App 470, 475; 499 NW2d 379 (1993). There is no factual support for plaintiff's claim that peas pose an unreasonable risk of harm. Plaintiff failed to identify what facts that were unavailable to her could have affected the outcome of the case. MCR 2.116(H).

Affirmed.

/s/ Henry William Saad
/s/ Donald E. Holbrook, Jr.
/s/ William B. Murphy